

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

JAMES D. JOHNSON, as next friend to  
Olivia Y., et al.

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:04cv251LN

HALEY BARBOUR, as Governor of the  
State of Mississippi, et al.

DEFENDANTS

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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COME NOW Haley Barbour, as Governor of the State of Mississippi, Donald Taylor, as Executive Director of the Mississippi Department of Human Services ("MDHS"), and Rickie Felder, as Director of the Division of Family and Children's Services ("DFCS") ("Defendants"), by their attorneys of record, submit their Motion for Summary Judgment and would show unto the court the following:

1. Eight Plaintiffs assert claims against Mississippi's Governor, the Executive Director of the MDHS, and the Director of the DFCS of the MDHS on behalf of themselves and an alleged class of approximately 3,000 foster children in the custody of the MDHS.
2. Plaintiffs seek declaratory and permanent injunctive relief that would make this court responsible for overseeing and administering Mississippi's foster care system.
3. This court has previously dismissed all but one of Plaintiffs' causes of action; the only remaining cause of action is an alleged violation of the Substantive Due Process clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs seek liability based on 42 U.S.C. § 1983.

4. Plaintiffs impermissibly expand the reach of their rights under the Fourteenth Amendment, seeking judicial enforcement of standards of *optimal* care, rather than the constitutionally mandated *adequate* care and safekeeping.

5. Defendants assert as a matter of law, that Plaintiffs have been provided adequate care and safekeeping.

6. Furthermore, Plaintiffs have failed as a matter of law to satisfy the requirements of deliberate indifference as required by precedent of the United States Court of Appeals for the Fifth Circuit.

7. For these reasons, Defendants are entitled to summary judgment on Plaintiffs' cause of action based on alleged violations of the Substantive Due Process Clause of the Fourteenth Amendment.

8. In support of this Motion for Summary Judgment, Defendants offer the following:

- Exhibit A: Medical and dental services provided to Olivia Y.
- Exhibit B: Mental health, medical, and dental services provided to Jamison J.
- Exhibit C: Mental health, medical, and dental services provided to Cody B.
- Exhibit D: Mental health, medical, and dental services provided to John A.
- Exhibit E: Mental health, medical, and dental services provided to Mary W.
- Exhibit F: Mental health, medical, and dental services provided to Tom W.
- Exhibit G: Mental health, medical, and dental services provided to Matthew W.
- Exhibit H: Mental health, medical, and dental services provided to Dana W.
- Exhibit I: Amended Complaint
- Exhibit J: *E.F. v. Scafidi*, No. 3:91CV591LN (S.D. Miss. Mar. 13, 1996) (Dist. File)
- Exhibit K: FY 2006 Joint Legislative Budget Committee Hearing Transcript
- Exhibit L: Selected portions of the MDHS/DFCS Policy and Procedures Manual
- Exhibit M: Affidavit of Martha McDaniel
- Exhibit N: Affidavit of Maggie Mixon
- Exhibit O: Excerpts of the deposition of Marva Lewis
- Exhibit P: Excerpts of the deposition of Peg Hess
- Exhibit Q: Case Reviews of Four Individual Children by Marva L. Lewis, Ph.D.
- Exhibit R: Excerpts of the deposition of Cathy Crabtree
- Exhibit S: Excerpts of the deposition of Dr. Wood Hiatt
- Exhibit T: Affidavit of Deborah Stewart
- Exhibit U: Excerpts of the deposition of Deborah Stewart
- Exhibit V: Bulletin 7500

Exhibit W: Affidavit of Terry Phillips  
 Exhibit X: Affidavit of Tracy Malone  
 Exhibit Y: Affidavit of John Webb O'Bryant  
 Exhibit Z: Affidavit Sylvia Sessions  
 Exhibit AA: Affidavit of Michelle Henry  
 Exhibit BB: Affidavit of Zadie Rogers  
 Exhibit CC: Excerpts of the deposition of Bill Brister  
 Exhibit DD: Custody, but No Care: A Review of Children's Experiences in MDHS  
 Custody by Peg Hess, Ph.D.  
 Exhibit EE: "Beyond Danger!" A Management Review of the Mississippi Department  
 of Human Services Division of Family and Children's Services  
 (MDHS/DFCS) by Cathy Crabtree  
 Exhibit FF: Affidavit of Queen Coleman  
 Exhibit GG: Affidavit of Brenda Coe  
 Exhibit HH: Affidavit of Earnest Johnson  
 Exhibit II: Excerpts of the deposition of Rickie Felder  
 Exhibit JJ: Affidavit of Vicky Donaho  
 Exhibit KK: SB 2694  
 Exhibit LL: Selected Supportive Services provided for named Plaintiffs  
 Exhibit MM: DHS 132575  
 Exhibit NN: Systems Review of the Mississippi Department of Human Services,  
 Division of Family and Children's Services, Final Report by CWLA  
 Exhibit OO: Excerpts of the deposition of Sue Steib  
 Exhibit PP: HB 572  
 Exhibit QQ: SB 2173  
 Exhibit RR: DHS W 002877-2878  
 Exhibit SS: DHS Jamison J 002203-04  
 Exhibit TT: Excerpts of the deposition of Peter Boulette  
 Exhibit UU: 2007 MDHS Budget Request for DFCS  
 Exhibit VV: HB 816  
 Exhibit WW: SB 2388  
 Exhibit XX: Narrative printed from Plaintiffs' counsel's website concerning Jamison J.  
 Exhibit YY: Excerpts of the deposition of Donald Taylor  
 Exhibit ZZ: Selected portions of the MDHS/DFCS Child and Family Service Review  
 Program Improvement Plan  
 Exhibit AAA: Selected portions of the MDHS/DFCS Child and Family Service Review  
 Statewide Self Assessment  
 Exhibit BBB: Report of Dr. Wood Hiatt on John A.  
 Exhibit CCC: Affidavit of Charles Rickie Felder; Plan for Reorganization and  
 Performance Improvement Strategies for the Mississippi Department of  
 Human Services; Draft Plan  
 Exhibit DDD: HB 1747  
 Exhibit EEE: 2006 MDHS Budget Report for DFCS  
 Exhibit FFF: Expert Report of Bill M. Brister, Ph.D.  
 Exhibit GGG: HB 1576  
 Exhibit HHH: Affidavit of Richard A. Berry

Exhibit III: P 002323

Respectfully submitted,

**HALEY BARBOUR, as Governor of the State of  
Mississippi; DONALD TAYLOR, as Executive Director  
of the Department of Human Services; and  
RICKIE FELDER as Director of the Division of  
Family and Children's Services**

BY: /s/ Dewitt L. ("Rusty") Fortenberry, Jr.

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

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**SO CERTIFIED**, this the **1st** day of **May, 2006**.

/s/ Dewitt L. ("Rusty") Fortenberry, Jr.